BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a Request for Commission Action to Prevent the Involuntary Disconnection of Customers of Firstcom, Inc.

ISSUE DATE: November 5, 2001

DOCKET NO. P-3146/M-01-1599

ORDER PROHIBITING DISCONNECTION, ESTABLISHING PROCEDURES FOR FUTURE CARRIER CHANGES, AND REQUIRING FURTHER FILINGS

PROCEDURAL HISTORY

On October 29, 2001, the Minnesota Department of Commerce (the Department) filed a letter stating that it appeared that Firstcom, Inc., a competitive local exchange carrier, would cease operations imminently. The letter stated that the Department had been unable to confirm either that all of Firstcom's customers had had adequate opportunity to switch to another carrier or that none of Firstcom's customers would lose local service when Firstcom stopped operating. The Department therefore asked the Commission to add the issue of preserving service to Firstcom customers to its next meeting, which was scheduled for the following day.

The Commission's Executive Secretary, acting under Minn. Rules 7829.2800, found that exigent circumstances justified scheduling the matter on less than the ten days notice normally required. Commission staff notified all parties that the matter would be heard the next day, October 30, 2001.

On October 30, 2001, Firstcom made two filings: (1) a notice that it was surrendering its operating authority and planned to cease operations as of midnight, October 31, 2001;[1] and (2) a request for a variance from Minn. Rules 7812.0600, subp. 6, which requires competitive local exchange carriers to give 60 days notice before withdrawing from their service areas.

The Commission took up the matter on October 30, 2001. The following parties appeared:

[1] This filing will be addressed in docket P-3146/M-01-1607.

- Firstcom, Inc., the company ceasing operations;
- the Department of Commerce, which represents the broad public interest in proceedings before the Commission;
- the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), which represents the interests of residential and small business customers in proceedings before the Commission;
- Qwest Corporation, the incumbent local exchange carrier from which Firstcom buys most of the services it provides to its customers;
- Winstar Telecommunications, a facilities-based competitive local exchange carrier from which Firstcom buys the services it provides to a small number of its customers;[2]
- Eschelon Telecom of Minnesota, Inc., McLeodUSA Telecommunications Services, Inc., and U S Link, all competitive local exchange carriers who seek to enroll Firstcom's customers as their own.

The parties who appeared raised two sets of issues: how to ensure that none of Firstcom's customers lost local service when Firstcom stopped operating and how to ensure that Firstcom's customers had an effective opportunity to choose new carriers.

FINDINGS AND CONCLUSIONS

I. Factual Background

Firstcom has offered competitive local exchange service in Minnesota since 1994. It serves most of its customers using Centron service purchased from Qwest. It serves a much smaller number of customers (approximately six) using services purchased from Winstar Telecommunications.

The Company is unable to pay Qwest a large, undisputed arrearage; it is also unable to pay Winstar a significant, disputed arrearage. It faces imminent disconnection by both companies, which would make it impossible to continue providing service to its customers. The Company intends to cease providing service entirely at midnight on October 31 and has so notified its customers.

Most of Firstcom's customers are small business customers, attractive prospects both to other competitive local exchange carriers (CLECs) and to Qwest. The CLECs who appeared at the Commission meeting, however, reported that it was extraordinarily difficult to activate service to these customers, largely because they lacked the technical information required to implement a carrier change. In fact, they said that they had been unable to activate service to a single customer, although, collectively, they had signed up hundreds.

[2] Winstar appeared by telephone.

There were at least two reasons for this. First, Firstcom, which would normally provide the technical information necessary to make a carrier change, was short-staffed as it wound down its affairs. Second, Qwest, the underlying carrier for most Firstcom customers, kept the technical information on these customers in an anomalous format, apparently because Firstcom, unlike most resellers, buys services for resale from Qwest's retail tariffs.

Further, Qwest stated that it feared incurring liability under anti-slamming and consumer privacy statutes if it released some of this information without Commission authorization. The company also assured the Commission that it was treating the CLECs and its own retail division in the same manner.

II. Commission Action

The parties at the hearing raised two sets of issues: how to ensure that none of Firstcom's customers lose local service when Firstcom stops operating and how to ensure that Firstcom's customers have a meaningful opportunity to choose new carriers. Both are matters of grave concern to this Commission.

A. Protecting Firstcom Subscribers from Losing Service

Protecting subscribers from the unexpected disruption of their telephone service is a central function of this Commission. Telephone service is essential to nearly all Minnesota households and businesses; service interruptions are inconvenient at best and hazardous at worst. In this case, for example, RUD-OAG states that at least one of Firstcom's customers is a medical clinic, whose patients clearly need uninterrupted telephone access to clinic personnel.

It has therefore long been state policy to prohibit telecommunications providers from severing connections with, or discontinuing service to, one another without Commission permission. State statutes explicitly prohibit disconnection between local carriers and toll carriers and between telecommunications carriers when service to end-users would be affected.[3] The Commission has long required interconnection agreements between carriers to prohibit disconnection by either party without Commission permission.[4] Here, too, the public interest requires prompt and effective action to protect all Firstcom customers from sudden, involuntary disconnection.

The Commission will therefore prohibit Qwest from disconnecting any Firstcom customer – except to transfer that customer to another carrier of the customer's choice – until January 1, 2002. This will protect customers from losing service as they explore telecommunications options and choose new permanent carriers. Qwest will bill Firstcom

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[3] Minn. Stat. §§ 237.12, subd. 2; 237.74, subd. 6; 237.74, subd. 9.

[4] E.g., <u>In the Matter of the Joint Application of KMC Telecom Inc. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement</u>, Docket No. 5426, 421/M-97-850, ORDER REJECTING INTERCONNECTION AGREEMENT (August 13, 1997).

customers at applicable Qwest rates as of November 1. The company will work with the Department and the RUD-OAG to develop a notice to Firstcom customers explaining these interim service arrangements.

While continuing service by Qwest will protect most Firstcom customers, protecting the six customers for whom Winstar is the underlying carrier is more difficult. These customers are served through a switch staffed by Firstcom; that switch will be shut off at midnight on October 31.

Both Firstcom and Winstar have notified these customers of their impending disconnection. The Department and the Commission's Consumer Affairs staff have also been working with the management of the building in which the six customers are located, trying to ensure effective notice. Three of the six customers are known to be in the process of transferring their service to another carrier. The Commission concludes that all reasonable steps that can be taken to protect these customers are being taken.

B. Protecting Firstcom Subscribers' Rights to Choose New Carriers; Ensuring a Competitively Neutral Marketplace

Protecting subscribers' rights to a meaningful choice of a new carrier – and protecting the rights of all carriers to a competitively neutral marketplace – are also core responsibilities of this Commission. Both Congress and the Minnesota Legislature have found that the public interest requires transforming the telecommunications sector of the economy from the monopoly of the past to a fully functioning competitive market.[5] This cannot happen unless customers have ready access to competitors' services. In this case, that access is compromised.

Firstcom's subscribers face special barriers to choosing any carrier other than Qwest. Because Firstcom is ending its operations and because the logistics of its resale strategy were unusual, procedures for transferring these customers from Firstcom to other CLECs are unusually complicated. Not only is technical information held in formats that are less accessible than usual, but Qwest is hampered in providing the information it does have by concerns about liability under anti-slamming and consumer privacy statutes, as well as by the need to maintain neutrality in its treatment of CLECs and its own retail division.

The CLECs who appeared at the Commission meeting reported being unable to activate service to a single one of the hundreds of customers they had enrolled. At least one CLEC also reported that it could not, in good faith, give potential customers requested assurances that their service would not be interrupted as a result of transferring service to the CLEC. Clearly, Commission intervention is required to ensure that Firstcom customers have the meaningful choice of carrier contemplated under state and federal telecommunications policies.

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[5]Minn. Stat. §§ 237.011, 237.16; Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

The Commission will therefore authorize Qwest to transfer Firstcom customers to other CLECs upon the customers' request, and to provide the information essential to implement those transfers, without requiring the confirmation or information normally provided by the CLEC from whom the customer is transferring. The Commission will require Qwest to work with Firstcom's customers and other carriers to ensure that service transfers occur as promptly and efficiently as possible.

To monitor the effectiveness of these measures the Commission will require Qwest to make at least two filings: an immediate filing stating how many Firstcom customers it has activated as permanent Qwest customers and a status report on January 15, 2002, detailing its compliance with the terms of this Order.

C. Addressing Violation of 60-Day Notice of Exit Requirement

Firstcom stated that it had been unable to comply with the requirement of Minn. Rules 7812.0600, subp. 6 that it give 60 days notice before withdrawing from its service area, because giving that notice would have compromised its efforts to obtain the capital necessary to continue providing service. The company pointed out that it had complied with the rule's substantive requirement that it not exit unless there was at least one other certified local exchange carrier capable of serving its customers. It had also given notice to all persons it was required to notify under the rule, albeit later than the 60 day time frame.

It is clear that Firstcom violated the 60-day notice requirement. It is equally clear that no good purpose would be served by considering sanctions against Firstcom. The Commission will take no further action on the company's failure to give the required notice.

ORDER

1. Until January 1, 2002, Qwest shall not disconnect any Firstcom customer, except to transfer that customer to another carrier of the customer's choice.

2. As of November 1, 2001, Qwest shall charge applicable Qwest retail rates to Firstcom customers who have not yet chosen and transferred to a replacement carrier.

3. The Commission authorizes Qwest to provide to other carriers the customer information necessary to effectuate customer-requested service transfers, without requiring the confirmation or customer information it would normally require from the carrier from whom the customer is transferring service.

4. Qwest shall work with Firstcom's customers and other carriers to ensure that service transfers occur as promptly and efficiently as possible.

5. Qwest shall work with the Department of Commerce and the Residential and Small Business Utilities Division of the Office of the Attorney General to develop a notice to Firstcom customers explaining the interim service arrangements required herein.

6. Qwest shall file forthwith a report stating how many Firstcom customers it has activated as permanent Qwest customers.

7. By January 15, 2002, Qwest shall file a status report detailing its compliance with the terms of this Order.

8. The Commission delegates to the Executive Secretary the authority to vary the time frames set in this Order.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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